MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2015/2016

UCL3622 – COMPANY LAW II

(All Sections / Groups)

9 MARCH 2016
Reading Time: 2.30 p.m. – 2.45 p.m.
(15 Minutes)
Answering Time: 2.45 p.m. – 5.45 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in the question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with 5 Questions only.

3. Attempt **FOUR** out of **FIVE** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall a CLEAN and ORIGINAL copy of:
   (a) Companies Act 1965 (Act 125)
   (b) Capital Markets and Services Act 2007 (Act 671)

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Rainy Sdn. Bhd. ("RSB") is a company which was incorporated with the sole object of development of a land in Sandakan. Doe, Ray and Mee are directors of RSB and they hold 60%, 30% and 10% shares in RSB respectively.

Disputes started to arise when Mee discovered that Doe and Ray had used the company's fund to pay not only their expenses incurred during a business trip at Langkawi, but also the expenses of their wives who accompanied them during the business trip. This was contrary to a board resolution passed earlier which stated that the expenses of directors incurred on journeys undertaken on the business of RSB should be paid by the company and their wives' expenses will not be paid by the company. Mee also discovered that Doe and Ray had diverted away the business of RSB to another company which Doe and Ray had set up. Subsequently, 70% of RSB's sole asset was compulsorily acquired by the State Government. Doe and Ray decided to change the business of RSB to cultivation of oil palm but this was objected strongly by Mee. Feeling frustrated, Mee wanted to dispose of all his shares in RSB. Mee attempted to sell his shares to Doe and Ray but they did not want to buy his shares. Mee then tried to sell his shares to third parties but also failed due to the disagreement of Doe and Ray.

Advise Mee as to the remedies available to him.

(Total: 25 marks)

QUESTION 2

"The Companies Act 1965 provides for a mechanism to facilitate a formal compromise or moratorium which binds dissenting participants after the requisite approval by the specified majority and upon confirmation by the court. This mechanism obviates the need for a messy and complicated series of negotiations with a view to obtaining the unanimous consent of all the creditors to implement a debt restructuring scheme."

With reference to the relevant statutory provisions and case law, assess the above statement on how this mechanism in the Companies Act 1965 operates to save companies which face financial difficulties.

(Total: 25 marks)

Continued...

QUESTION 3

(a) "There must be at least two members personally present to constitute a meeting."

With reference to the relevant statutory provisions and case law, discuss to what extent the statement is correct.

(11 marks)

(b) Hello Sdn. Bhd. ("HSB") is a company dealing with mobile phones. Its articles of association is in the form of Table A of the Fourth Schedule of the Companies Act 1965. An Extraordinary General Meeting was called to alter the Articles of Association by adding a provision which empowers the directors to buy out at a fair price the shareholding of any member who competes with the company's business.

Garfield, the chairman of the board of directors was twenty minutes late for the meeting. Snoopy was elected to preside as the chairman of the meeting. Garfield was not happy with this.

Charlie complained that he did not receive the notice of meeting and he came to know about the meeting when his brother, Brown who is also a member of HSB received the notice of meeting. The company secretary explained that the omission was accidental because Charlie was the only member who did not receive the notice. Charlie was still dissatisfied and claimed that such omission invalidated the meeting.

April, who holds 3% of the company shares, contended that the notice of meeting was only given to the members eighteen days prior to the meeting and therefore fell short of the statutory requirement. While other members agreed that short notice was given, they did not mind passing a resolution to alter the articles of association. April threatened to commence a legal action in the court to challenge the validity of the resolution passed in this meeting to alter the articles of association. The board of directors would like to know whether that resolution will be invalidated on the ground of short notice.

Advise Garfield, Charlie and the board of directors of HSB.

(14 marks)

(Total: 25 marks)

Continued...

QUESTION 4

Westeros Bhd. ("WB") borrowed RM1 million from Meereen Bank Bhd. ("MBB") giving as security for the loan, a floating charge over all its assets. A clause in the debenture deed provided that WB was not to create any other charges over its assets ranking in priority to or *pari passu* with the floating charge created in favour of MBB. Six months later, WB purchased several machines and resold most of them for substantial profits. A fixed charge was created over the unsold machines valued at RM1.5 million in favour of Vinterfell Bhd. ("VB") to secure monies borrowed from the latter. Both the floating and fixed charges were duly registered at Companies Commission of Malaysia within the prescribed time. WB has now gone insolvent.

(a) Advise MBB as to who has priority over the charged machines.

(18 marks)

(b) Would your answer be different if, in the debenture deed with MBB, there was a term to the effect that any attempt by WB to create any other charge over the assets subject to the floating charge, without the consent of MBB, would result in the immediate crystallisation of the floating charge?

(7 marks)

(Total: 25 marks)

QUESTION 5

Chancery Bhd. ("CB") was set up in 2000 to manufacture plastic products in Kuala Lumpur. The capital of CB is RM200,000 divided into 100,000 ordinary shares and 100,000 preference shares, both at RM1 per share. The directors of CB are Warren and Russell who are also CB's shareholders, holding 40% of the preference shares each. The remaining preference shares are held by Bow. The company adopts Table A as its articles of association.

The company has been doing very well since its establishment and therefore, the directors feel that it is time for the company to expand its business to some other states. For this purpose, CB will need additional capital to finance the operation of the business at its new locations. The directors propose to issue 200,000 RM1 preference shares to a certain number of the company's clients ranking *pari passu* with the existing preference shares. Unfortunately, Bow objects to this proposal.

Advise the company.

(Total: 25 marks)

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